

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

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In the Matter of:	Case No.
CHRISTINE PERSAUD, Debtor.	10-44815-ess

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KLEIN, Plaintiff,	Adv. Case No.
v.	10-01228-ess

CHRISTINE PERSAUD, et al, Defendants

- - - - -x

KLEIN, Plaintiff,	Adv. Case No.
v.	11-01456-ess

JOHN PEREIRA, Defendant

- - - - -x

United States Bankruptcy Court
271 Cadman Plaza East
Brooklyn, New York

December 16, 2011

9:21 AM

B E F O R E:

HON. ELIZABETH S. STONG

U.S. BANKRUPTCY JUDGE

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2 [1] Adjourned Pre-Trial Conference re: Complaint. Adjourned
3 from: 10/19/10 11/4/10 12/14/10 1/5/11 2/2/11 3/10/11
4 4/7/11 5/20/11 6/17/11 8/16/11 9/27/11 10/28/11 11/8/11
5 11/14/11 11/28/11

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7 [187, 228] Adjourned Hearing (RE: related document(s)[182]
8 Application to Employ Troutman Sanders. Adjourned from:
9 9/27/11 10/28/11 11/8/11 11/14/11 11/28/11

10

11 [214] Adjourned Hearing on Application for Order to Show Cause
12 (RE: related document(s)[196] Motion for 2004 Examination of
13 Philip Gottehrer). Adjourned from: 9/8/11 9/13/11 9/20/11
14 9/22/11 10/28/11 11/8/11 11/14/11 11/28/11

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16 [203] Adjourned Hearing on Application for Order to Show Cause
17 (RE: related document(s)[197] Motion for 2004 Examination of
18 Joel Klein). Adjourned from: 9/8/11 9/13/11 9/20/11
19 10/28/11 11/8/11 11/14/11 11/28/11

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21 [201] Adjourned Hearing on Application for Order to Show Cause
22 (RE: related document(s)[198] Motion for 2004 Examination of
23 Caring Home Agency). Adjourned from: 9/8/11 9/13/11 9/20/11
24 9/22/11 10/28/11 11/8/11 11/14/11 11/28/11

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1 [202] Adjourned Hearing on Application for Order to Show Cause
2 (RE: related document(s)[199] Motion for 2004 Examination of
3 Abraham Klein). Adjourned from: 9/8/11 9/13/11 9/20/11
4 9/22/11 10/28/11 11/8/11 11/14/11 11/28/11

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6 [204] Adjourned Hearing on Application for Order to Show Cause
7 (RE: related document(s)[195] Motion for 2004 Examination of
8 Melquisedec Escobar). Adjourned from: 9/8/11 9/13/11
9 9/20/11 9/22/11 10/28/11 11/8/11 11/14/11 11/28/11

10
11 [179] Adjourned Motion for Violation of Automatic Stay and to
12 Void Certain Decisions of the State Supreme Court Issued In
13 Violation. Adjourned from: 9/27/11 10/28/11 11/8/11
14 11/14/11 11/28/11

15
16 [335] Motion for Relief from Stay to Allow Parties to Return to
17 State Court for the Sole Purpose of Determining the Validity of
18 the Default Arbitration Award, the Validity of the Underlying
19 Contract Containing the Arbitration Clause and Who is the
20 Rightful Owner of Caring Home Health Care

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22 [1] Adjourned Pre-Trial Conference re: Complaint. Adjourned
23 from: 10/28/11 11/8/11 11/14/11 11/28/11

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25 Transcribed by: Shalom Boroda

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P R O C E E D I N G S

THE CLERK: Numbers 1 through 10 on the calendar. All matters regarding Christine Persaud.

THE COURT: All right, let's get your appearances on the record, please.

MR. CAMPO: Good morning, Your Honor.

MR. STREMB: Lee Stremba and John Campo of Troutman Sanders for the firm.

THE COURT: Thank you.

MR. CAMPO: And for the trustee, Your Honor.

THE COURT: Thank you.

MR. ZILBERBERG: Mendel Zilberberg of Mendel Zilberberg & Associates for Creditor Klein, with Joel Lewittes, of counsel, and Pery Krinsky, of counsel. Good morning, Your Honor.

THE COURT: Good morning.

MR. KRINSKY: Good morning, Your Honor.

MR. LEWITTES: Good morning.

THE COURT: All right. We have a number of matters that we've carried from time to time on the calendar today.

I would like to move first to the motion for relief from the automatic stay. Do we have a proponent of the motion here in the courtroom?

I see that we do not.

MR. ZILBERBERG: I'm sorry, Your Honor. I missed

1 that. The -- which matter is Your Honor --

2 THE COURT: The motion for relief from the automatic
3 stay.

4 MR. LEWITTES: I'm ready.

5 THE COURT: Is it your motion?

6 MR. LEWITTES: I'm waiting for the trustee and the
7 debtor's counsel. It's the debtor who has originally made the
8 motion.

9 THE COURT: It is the debtor's motion. And there is
10 no other proponent of the motion, to my knowledge. There is
11 opposition -- I believe there is opposition to the motion.

12 MR. LEWITTES: Yes, Your Honor.

13 THE COURT: All right. In the absence of anyone here
14 to speak on behalf of the motion --

15 MR. PREZIOSI: Good morning, Your Honor.

16 THE COURT: Morning. Are you debtor's counsel?

17 MR. PREZIOSI: I am, Your Honor.

18 THE COURT: Are you the proponent of the motion for
19 relief from the automatic stay?

20 MR. PREZIOSI: Yes.

21 THE COURT: May I hear you?

22 MR. PREZIOSI: Yes, Your Honor.

23 THE COURT: We should get your appearance on the
24 record, too. We took appearances.

25 MR. PREZIOSI: Judge, I have two motions pending. One

1 is --

2 THE COURT: You may take off your overcoat.

3 MR. PREZIOSI: Thank you, Judge.

4 Judge, I have made --

5 THE COURT: The hearing was scheduled for 9 o'clock,
6 as you know. And I was a few minutes late getting to the
7 bench. But I'm glad you're here.

8 MR. PREZIOSI: Thank you, Judge.

9 Judge --

10 THE COURT: I'd like to hear you on the motion for
11 relief from the automatic stay, number 9 on the calendar,
12 please.

13 MR. PREZIOSI: Judge, for all the reasons outlined in
14 my motion --

15 THE CLERK: Excuse me, may you please state your name
16 for the record?

17 MR. PREZIOSI: My name is Stephen Preziosi, for the
18 debtor, Christine Persaud.

19 For all the reasons outlined in my motion, Judge, I
20 think the state court is a better venue because we're dealing
21 with state court issues. All of the issues -- the validity of
22 the arbitration award, the default arbitration award -- the
23 state court has a specific statutory vehicle to remedy that:
24 Article 75 of the Civil Practice Law and Rules, Your Honor.

25 I think there has been a lot of time and effort and

1 energy and money spent in a lot of other issues that are
2 heavily dependent upon whether or not -- or, I should say,
3 heavily dependent upon who owns Caring and whether or not the
4 arbitration award is valid.

5 And I think the specific statutory vehicle, Article 75
6 of the Civil Practice Law and Rules in the State Court of New
7 York, the state court is a venue that is specifically designed
8 and has experience in handling those types of cases. And I
9 think that is the main reason that -- or judicial economy is
10 really the main reason that those issues would be better heard
11 in the state court venue.

12 THE COURT: All right. There is some concern
13 expressed -- and I think it may well be well founded -- that
14 the debtor in a Chapter 7 case is the wrong party to seek this
15 relief. And the trustee opposes the relief. It seems to me
16 that all of the interests in claims that the debtor has become
17 property of the estate. And whatever else the parties may
18 agree on or disagree on, they surely agree on that.

19 MR. PREZIOSI: Well, Judge --

20 THE COURT: That you are -- that you practice more
21 commonly in the state court and so this may be an issue that
22 you were not immediately familiar with --

23 MR. PREZIOSI: Well, the --

24 THE COURT: -- for whatever reason, I --

25 MR. PREZIOSI: -- the debtor does have a residual

1 interest.

2 THE COURT: -- urge you to address directly the issues
3 raised in the trust -- and let me finish please; I'm sorry, but
4 I need to finish -- the issues raised by the trustee because I
5 think they are quite persuasive. If the trustee were seeking
6 this relief, it would be one thing, but the trustee opposes it.

7 MR. PREZIOSI: Well, Judge, I think it's within Your
8 Honor's discretion to decide what would be the best place and
9 what would -- in the interest of judicial economy, where should
10 these issues be heard and why.

11 THE COURT: But the debtor is the wrong party.

12 MR. PREZIOSI: And -- and --

13 THE COURT: There would be motion to dismiss, I
14 expect, or there would be a defense able to be asserted that it
15 is no longer the debtor, individual debtor's, prerogative to
16 proceed without the trustee. The trustee would have to
17 substitute in. If you have an agreement to that effect with
18 the trustee, that's one thing.

19 MR. PREZIOSI: Well, Judge --

20 THE COURT: But that's not in the record; the trustee
21 opposes a relief.

22 MR. PREZIOSI: -- Judge, the debtor has a residual
23 interest. This -- these -- both of these companies generate a
24 lot of money that far exceed what is the debt that is owed.
25 She has a residual interest in the outcome.

1 THE COURT: But who is the proper party in the state
2 court?

3 MR. PREZIOSI: Both.

4 THE COURT: Who is the proper party? It's a different
5 question in whether there --

6 MR. PREZIOSI: -- both the --

7 THE COURT: -- is a residual interest available.

8 MR. PREZIOSI: Both the debtor and the trustee would
9 be proper parties in the state court.

10 THE COURT: Can you cite me one case that supports
11 that?

12 MR. PREZIOSI: I can tell you that the debtor has a
13 residual interest. If these companies are sold, are
14 liquidated, the monies left over, my client is entitled to
15 those monies. And --

16 THE COURT: Mr. Preziosi, can you point me to even one
17 case consistent with your position?

18 MR. PREZIOSI: That the debtor has a residual
19 interest, Judge?

20 THE COURT: No, that the debtor has the ability to
21 proceed as the party, as opposed to the trustee, when this is a
22 Chapter 7 case. Chapter 11, different story.

23 MR. PREZIOSI: When she has a --

24 THE COURT: Chapter 7, there's no law to that effect
25 in your brief --

1 MR. PREZIOSI: There's no authority --

2 THE COURT: -- and I'm not surprised that there isn't.

3 MR. PREZIOSI: -- there's no authority for my client's
4 residual interest, Your Honor?

5 THE COURT: Are you asking me the question, Mr.
6 Preziosi? I think you're posing to me the wrong question. The
7 question is who is the proper party. And there is no law in
8 your brief, nor am I aware of --

9 MR. PREZIOSI: Well, I will --

10 THE COURT: -- any controlling law that holds that.
11 So I have to say I'm inclined to deny the motion.

12 MR. PREZIOSI: -- I will brief that for Your Honor
13 because --

14 THE COURT: Mr. Preziosi, you've made the motion.
15 You've had your time. And you were aware of the issue because
16 it's raised directly by the trustee. I need to move this
17 matter forward.

18 All right, I've told you my concerns. Let's hear from
19 the -- opposition will have a chance to reply.

20 Thank you, Mr. Preziosi.

21 MS. SINISI: Good morning, Your Honor. Ann Marie
22 Sinisi from Pereira & Sinisi, attorney for the trustee in
23 matters relating to Abraham Klein and Caring, pending a
24 retention of Troutman Sanders.

25 With regard to the debtor's motion, the trustee filed

1 his opposition. The debtor has no standing and, I believe the
2 Court very aptly put, that seems to be the one matter where we
3 are in agreement with Creditor Klein that there is -- the
4 debtor has no standing. And, in fact, the issues before the
5 Court with regard to who owns Caring have been joined by the
6 trustee and the Creditor Klein. So --

7 THE COURT: It may well be that at some point in
8 the -- in response to the appropriate request for relief made
9 by the -- made by a party able to proceed in the state court,
10 that this kind of relief would make sense. I do not foreclose
11 the prospect of this matter proceeding in state court if and to
12 the extent that this relief is denied. I'm just very concerned
13 that the wrong party is seeking the relief and that the
14 trustee's points -- and the points, I think -- same points may
15 be made by the Creditor Klein.

16 The prospect that the debtor would be unable to
17 proceed in the absence of trustee and that any interest of this
18 estate might be actually jeopardized because the wrong party
19 would be there is a serious concern. Separately, to the extent
20 that this may be within my discretion, I would, because of
21 those concerns, be reluctant to introduce those additional
22 issues to the picture here. Yet not to say that that may not
23 be the right forum in some context at some point, just not with
24 a Chapter 7 debtor out-of-possession.

25 As the -- representative of whether or not there was a

1 residual interest, that's an entirely different question.

2 Entirely different question, seems to me.

3 All right, anything further?

4 MS. SINISI: Well --

5 THE COURT: You can be sure I read your papers and
6 read your briefs.

7 MS. SINISI: Thank you, Your Honor. Just -- as to the
8 proper forum, I'm sure the Court is aware the trustee filed a
9 motion to withdraw the reference to bring the matters before
10 the district court --

11 THE COURT: District court. I saw that.

12 MS. SINISI: -- and is supported strongly by the
13 Internal Revenue Service, who is a major creditor, if not the
14 largest unsecured creditor as a priority creditor, in this
15 case.

16 THE COURT: That's not before me today. In fact, it's
17 ultimately decided by the district court, I think, not me. But
18 I am aware of it. I did see it. Thank you.

19 All right. I'll -- who's -- we have a team here for
20 Mr. Klein. Who's taking this issue?

21 MR. ZILBERBERG: Your Honor, I'll try. I think that
22 the -- there's nothing, really, for us to add on the issue of
23 standing. And I don't want to waste the Court's time.

24 However, we are concerned that the debtor has two
25 unsigned submissions to this Court which take factually

1 inconsistent stands as to the occurrences. And we ask -- we've
2 raised it in our motion. And we would ask the Court to
3 consider asking debtor's counsel to conform, first of all, that
4 their statements should be affirmed under penalties of perjury
5 and, B, that they conform -- they are pleadings so that the
6 facts are at least consistent.

7 THE COURT: With respect to the motion for relief from
8 the automatic stay? Are you referencing the papers that were
9 filed by --

10 MR. ZILBERBERG: By Mr. Preziosi.

11 THE COURT: -- Mr. Preziosi?

12 MR. ZILBERBERG: Yes. Yes.

13 THE COURT: All right.

14 MR. ZILBERBERG: In the first, he doesn't make his
15 assertion -- or his affirmation under penalties of perjury, but
16 he has submitted to this Court that, in fact, Caring did not
17 belong to the debtor -- he said that in open court -- and that
18 it belonged to a trust. And now he comes and says that the
19 debtor has an interest in Caring. We find those two statements
20 to be factually inconsistent.

21 Pursuant to the Rules, his affirmations should be
22 signed in order to have any validity. They should be under
23 penalties of perjury and he should be asked to conform and take
24 a stand as to what debtor's position is.

25 THE COURT: Well, on the one hand, the law, in a

1 general way, does contemplate pleading in the alternative. But
2 that's usually alternative theories as opposed to alternative
3 positions on significant issues of fact. It seems to me it
4 might be unfair to Mr. Preziosi to put him on the spot, as of
5 right now, to reconcile the different positions that the debtor
6 has taken. But it will come to pass, at some point, that the
7 debtor will need to take a consistent position and support it
8 with evidence.

9 I am reviewing the file. I see the notice of motion,
10 not signed. We have a custom of signing papers here. It's not
11 the state court practice --

12 MR. PREZIOSI: The affirmation is signed, Your Honor.
13 Maybe the --

14 THE COURT: Well, the motion -- the notice of motion
15 needs to be signed as well, in the general.

16 MR. PREZIOSI: I'll certainly --

17 THE COURT: But I will overlook the defect. I take
18 this to be -- it's substantively the equivalent of your
19 signature. But just -- the practice point is well taken.

20 With respect to the motion, it maybe was a signed
21 copy, but the electronic copy doesn't show the signature in all
22 events. Again, the conformed signature is part of our
23 practice, our expectation.

24 Unsigned, memorandum of law.

25 Did you file an affirmation of counsel in support of

1 the motion, Mr. Preziosi?

2 MR. PREZIOSI: Judge, the hard copy that I filed was
3 signed. Your Honor may be looking at an electronic copy that
4 I --

5 THE COURT: I see a memorandum of law -- I am. I'm
6 looking at what we printed. I have the memorandum of law --

7 MR. PREZIOSI: Yeah, that. I also signed a copy on
8 disk -- excuse me, filed a copy on disk, which may be the copy
9 that Your Honor is looking --

10 THE COURT: I have the motion -- I don't see an
11 affirmation.

12 MR. PREZIOSI: But all the physical copies were
13 signed.

14 THE COURT: Okay. All right.

15 Mr. Zilberberg, could you point me to the affirmation?
16 I see a notice of motion, a motion and a memorandum. But I'm
17 not finding the document to which you refer. I know I've read
18 all the documents that were -- I believe I've read all the
19 documents that were filed in connection with this. So --

20 MR. ZILBERBERG: The document --

21 THE COURT: I have your affirmation.

22 MR. ZILBERBERG: I'm sorry, Your Honor.

23 THE COURT: Go ahead.

24 MR. ZILBERBERG: I'm looking through the papers as we
25 speak, Your Honor.

1 THE COURT: Okay. In all events, I think the point
2 was made. And I take it that there are signed copies, perhaps
3 in counsel's file. And --

4 MR. PREZIOSI: They've all been signed, Judge.

5 THE COURT: -- so we --

6 MR. ZILBERBERG: Your Honor --

7 THE COURT: It's just a good reminder to all
8 participants.

9 MR. ZILBERBERG: Your Honor, if they've been signed
10 and if they've been submitted, to the extent that they set
11 forth facts and not memorandum of law, we would ask that
12 copies -- the Court direct that copies that are signed that are
13 stated to be under penalties of perjury be produced to us.

14 THE COURT: I'm not going to do that. It's a
15 motion. It's -- I'm inclined to deny the motion on the law and
16 the record that's before me. I don't think it's necessary to
17 increase the burdens on the parties.

18 Your points are well taken. If you want to file --
19 any party wishes to file evidence before the Court for
20 consideration in connection with a motion, it's, of course,
21 necessary that it be reflected in an affidavit or an
22 affirmation appropriately attested to and signed.

23 So for all the reasons reflected in the record, I'm
24 going to deny the motion for relief from the automatic stay for
25 several reasons, including, without limitation, that this

1 Chapter 7 debtor does not appear to be an appropriate party to
2 proceed with the litigation in state court in the face of the
3 opposition of the Chapter 7 trustee; that there are risks that
4 would be posed to whatever property the estate may be --
5 subject to that litigation because there's a significant
6 question as to whether the debtor, as opposed to the trustee,
7 is the one able to pursue those rights.

8 I acknowledge the possibility that the debtor may have
9 a residual interest that has value here. The value of the
10 assets in this case are unknown at this point. But certainly
11 the amount of heavily contested litigation suggests that, in
12 the perception of the parties, there may well be value. But
13 that residual interest in equity after all of the creditors are
14 paid is not the same as being the party who is the proper party
15 to proceed to assert the rights of this Chapter 7 estate. That
16 party is the trustee.

17 And so, for all the reasons reflected in the record
18 and some of the reasons summarized, I'm going to deny the
19 motion and I'll ask the trustee to submit an appropriate order.
20 I think that's appropriate.

21 MS. SINISI: Thank you, Your Honor.

22 THE COURT: All right, thank you.

23 With respect to the other matters on the calendar, it
24 seems to me that we aren't really in a position to make a lot
25 of progress today. And I don't want to keep you any longer

1 than I need to.

2 There was a question made about the timing of the
3 discovery deadline in one of the adversary proceedings and how
4 that couples with time to respond. There was also a motion
5 that we addressed to some extent.

6 Mr. Preziosi, you were very new to the matter when I
7 asked you some questions about this at our last hearing or the
8 hearing before. Those are two things on my list on which I'd
9 like to make progress.

10 But I, knowing from the correspondence and from the
11 history that there are so many things on which you disagree, I
12 want to caution the parties this is not a general forum for
13 complaints about each other. This is a matter -- this is a
14 hearing in which you're going to take up matters where we can
15 make particular progress and I can make decisions. All right?
16 As to your complaints, I urge you to set them to the side.

17 All right, I have before me the letter of Mr.
18 Zilberberg concerning the timing -- I guess I should say the
19 letter of Mr. Lewittes on the letterhead of Mr. Zilberberg --
20 concerning the adversary proceeding status.

21 Mr. Lewittes, can I ask you to summarize what you're
22 asking the Court to do in the context of that adversary
23 proceeding, the 10-01228 Klein v. Persaud? It seems to me
24 you're looking for some definition with respect to discovery
25 time and -- and we need to get a sense about the time of an

1 answer to motion, I think.

2 MR. LEWITTES: Joel Lewittes, Your Honor.

3 THE COURT: Please.

4 MR. LEWITTES: I believe -- it's based upon the facts
5 that we have set forth in that letter -- that we need real time
6 for discovery. We have been pushed a bit. And given the
7 status of the matters here before the Court with respect to
8 discovery, it would not be unreasonable, I believe -- as a
9 matter of fact, I believe it would be more fruitful -- if the
10 Court granted us more time for discovery, based upon the facts
11 that we have set forth with fine particularity in our letter,
12 dated to the Court on December the 6th.

13 THE COURT: All right. Well, let's think about the
14 pleadings here. We don't -- to this moment, I think, we don't
15 have an answer or motion in response from the debtor. And
16 perhaps, following on the logic of our last matter, this is a
17 question at least as much for trustee's counsel as for debtor's
18 counsel.

19 Ms. Sinisi, let me hear from you.

20 We have an action that's been asserted against --

21 MS. SINISI: Your Honor, this is the -- regarding the
22 pretrial conference on the adversary proceeding brought by
23 Abraham Klein against the trustee which seeks a declaratory
24 judgment that Klein owns Caring.

25 MR. ZILBERBERG: No, no, no, no, no. The other one.

1 MS. SINISI: The 2 --

2 MR. ZILBERBERG: She's speaking about the one we
3 brought against (indiscernible) dischargeability.

4 MS. SINISI: For --

5 MR. ZILBERBERG: (Indiscernible).

6 THE COURT: First on the calendar is Klein v. Persaud.
7 And this is now, of course -- is this the trustee's enterprise
8 to defend?

9 MS. SINISI: Yeah, no. This was -- no, Your Honor.

10 THE COURT: You think this is for the debtor, not the
11 trustee?

12 MS. SINISI: Yeah, Your Honor, we did not --

13 MR. CAMPO: Your Honor, may I be heard on this?

14 THE COURT: Sure.

15 MR. CAMPO: I understand that Klein is the plaintiff
16 in the action, but this is a dischargeability action. And, in
17 fact --

18 THE COURT: I'm sorry.

19 MS. SINISI: Yeah --

20 THE COURT: Of course it is. Thank you very much.

21 Long --

22 MS. SINISI: Your Honor -- yeah, I apologize. I
23 wasn't at the prior hearing --

24 THE COURT: -- long docket. I'm sorry.

25 MS. SINISI: -- so I thought perhaps I missed

1 something. But yeah --

2 THE COURT: I'm sorry. No, you're absolutely right.

3 It is --

4 MS. SINISI: Okay. Thank you, Your Honor.

5 THE COURT: -- that's exactly what it is. And I
6 misspoke. And I'm too much in the tall grass of the matter we
7 just considered.

8 All right, this is a dischargeability action. It
9 concerns -- there's a motion to dismiss pending. It was filed
10 by prior counsel. So that -- I'm so sorry, I need to -- I
11 conflated two matters and I need to restate my prior
12 statements. We have a motion to dismiss. We had counsel
13 getting up to speed on that last time we were here.

14 I expect you've had time now to be addressing those
15 issues. Mr. Preziosi, let me hear you --

16 MR. PREZIOSI: Your Honor, on the --

17 THE COURT: -- on the status of the motion and --

18 MR. PREZIOSI: On the issue of more time for
19 discovery, Your Honor?

20 THE COURT: No, on the question of your motion to
21 dismiss. Because if the dismissal is granted, there's no need
22 for discovery. If the dismissal is denied, then clearly, we
23 need a discovery schedule. So I think it is actually timely to
24 take up the motion to dismiss. Like a few minutes to review
25 your notes on that? I'll give you that time.

1 MR. PREZIOSI: Judge, I --

2 THE COURT: This is number 6 on the docket, filed by
3 your client. I brought it to your attention at our last
4 hearing, I'm fairly certain.

5 MR. PREZIOSI: My understanding was that Your Honor
6 was going to dismiss the motion. I haven't taken a look.

7 THE COURT: You're going to withdraw the motion? I
8 don't know what you mean by "dismiss the motion".

9 MR. PREZIOSI: No, I don't want to withdraw the
10 motion. But my understanding was that Your Honor was not going
11 to entertain it.

12 THE COURT: I consider all the motions that are made.
13 If you're -- if, on behalf of your client, you're withdrawing
14 the motion, that's fine. But I need to know what your position
15 is.

16 MR. PREZIOSI: No, I'd like to take a look at the
17 motion before -- before I -- the last we spoke --

18 THE COURT: Okay. It's number 6 on the docket. You
19 can pull it up on the screen.

20 MR. PREZIOSI: 6.

21 THE COURT: We'll take a five-minute break to let you
22 dig in. All right? Thank you very much.

23 THE CLERK: All rise.

24 (Recess from 9:44 a.m. until 9:50 a.m.)

25 THE COURT: All right, let me summarize where I think

1 we are, from the record. And this takes a little bit of
2 history because this was an adversary proceeding filed, perhaps
3 unusually, in two different debtors' cases, but the same
4 complaint. Because of that, there have been some complexities
5 to the administration and some errors, perhaps going back a few
6 months, on the side of case administration, for which I take
7 full responsibility.

8 But we now have an action restored to the calendar and
9 a scheduling order, which is the action brought by the Creditor
10 Klein against Christine Persaud, the debtor in this case,
11 raising a claim of -- or there's a question as to whether it
12 states a claim, framed by a motion, but raising a claim of
13 nondischargeability under Section 523 of the Bankruptcy Code.

14 There was a scheduling order entered -- and this is
15 important because this is the framework within which we are
16 proceeding -- directing a response to the complaint, answer of
17 motion by November 10th. There is on file a motion to
18 dismiss -- and from time to time, I pose the question do you
19 intend to proceed with the motion or do you want to answer or
20 do you want to make a new motion. That motion is actually not
21 on today's calendar. So in fairness to counsel, I'm not going
22 to expect you to argue it today.

23 But I do need to know if you intend to defend the
24 proceeding. And I'll give you a very short amount of time,
25 since you're in default of the existing scheduling order, to

1 get a response to the complaint in, whether it's an answer or
2 motion.

3 MR. PREZIOSI: Just -- I'll have a --

4 THE COURT: But that's where we are, as I see it.

5 MR. PREZIOSI: I'll have a response in by the --
6 before the next court date, Your Honor.

7 THE COURT: You'll have a response in in a week?

8 MR. PREZIOSI: Yes. It'll be fine.

9 THE COURT: Okay. Because it's a -- I gave you a date
10 of November 10th and that date has come and gone.

11 So we'll issue a scheduling order that says the -- and
12 I'll note in the docket -- in fact, we'll simply do the docket
13 notation because this is a simple direction that your time to
14 respond to the complaint, whether to move or to answer, is
15 extended to December 23rd. And we'll see where we are after
16 that.

17 MR. PREZIOSI: Thank you, Your Honor.

18 THE COURT: No, thank you.

19 All right. And I think that is really the work we're
20 going to be able to do today. Because of the requirements of
21 the Court calendar and other matters, those strike me as the
22 matters most appropriate. This is not a general status report
23 I have to say.

24 And -- oh, I need to give you some relief on your
25 discovery. I'm going to give you another sixty days because I

1 do this by date certain. I don't have a basis to say some
2 number of days after something happens; we'll say sixty days.
3 If we need to revisit that, we can. I do wonder if there's any
4 information the parties haven't exchanged about each other in
5 some form or another. But that's for the parties, not for me.
6 Sixty days. Today is -- February 14th. So your discovery
7 deadline will be February 14th. And with those two dates, we
8 will issue a scheduling order. All right?

9 Okay, I think we're down to scheduling an adjourn date
10 for the continued matters that we do have, which include those
11 2004 examination applications, of course; and status
12 conferences in both of the adversary proceedings; and the
13 motion with respect to stay violation that addresses some other
14 issues as well. And I'm thinking that it really -- I believe
15 we have closed the record with respect to the retention issue
16 with the submission of the affidavit testimony and the waiver
17 of cross-examination of Professor Green. And so I don't think
18 it makes sense for you to come back until I've decided that
19 issue.

20 I'm not going to give you my decision today, but I
21 think we need to know who's in place and it's not a good use of
22 the parties' time, nor the Court's, to have you back before
23 then. And so, doing my best prediction, I'm going to look at
24 late January. If there's -- it's possible to adjust those
25 dates, I shall. But I'm -- let's see. In terms of scheduling,

1 is the week of the 23rd, a week that's possible for the
2 parties?

3 MR. STREMB: Yes, Your Honor.

4 THE COURT: Are there any days we need to avoid? I'm
5 saying on scheduling only.

6 MR. STREMB: Your Honor, that would be fine. I --

7 THE COURT: Okay.

8 MR. STREMB: -- I just want to point out that I
9 believe Mr. Krinsky has an issue with respect to conflicts
10 check documents.

11 THE COURT: All right. Well, I encourage the parties
12 to work out all document issues between themselves. I'm going
13 to say that we'll look at, maybe, midday on the 24th of
14 January. That's a Tuesday. For now, at least as a holding
15 date, we'll think about noon on the 24th.

16 MR. KRINSKY: Your Honor, I apologize. I --

17 THE COURT: You don't need to apologize.

18 MR. KRINSKY: Unfortunately, I'm teaching at the
19 Judicial Institute in the morning and at the New York State Bar
20 in the afternoon. I believe it's --

21 THE COURT: On the 24th?

22 MR. KRINSKY: On the 24th.

23 THE COURT: Well, the issue of retention will be
24 resolved at that point. Is your ongoing participation
25 anticipated?

1 MR. KRINSKY: It is not. I thought you wanted us back
2 for that specific issue. But if it's --

3 THE COURT: No.

4 MR. KRINSKY: -- only issuing of a decision --

5 THE COURT: I think the record's closed. So I -- I'll
6 work with your schedule if we need to. But I also don't want
7 to impose on you --

8 MR. KRINSKY: There's no reason --

9 THE COURT: -- any longer than necessary.

10 MR. KRINSKY: Indeed. If there's no reason, then my
11 schedule is moot.

12 THE COURT: It may be. But, ideally, we'd accommodate
13 everybody, just in case. Another -- well, the -- what did
14 we -- what did I just say? The 24th at 11:30. The 24th at
15 11:30? And if, for some reason -- and, gosh, I hope this does
16 not prove to be the case. But if, for some reason, we're still
17 checking the last case or something like that, then you'll get
18 an appropriate communication from the Court. All right?

19 MR. ZILBERBERG: Your Honor?

20 THE COURT: January 24th at 11:30

21 MR. ZILBERBERG: Your Honor?

22 THE COURT: Yes?

23 MR. ZILBERBERG: May I just ask that on the 24th at
24 11, I --

25 THE COURT: 11:30.

1 MR. ZILBERBERG: 11:30. I have a matter in state
2 court. However, if it's just a decision that the Court is
3 going to order, if, as long as I could find that out in
4 advance, I could move the state court issue --

5 THE COURT: You'll have a written decision from -- I
6 expect to issue some kind of a written order on the retention
7 issue. It will be dealing with whatever there is to do in this
8 Chapter 7 case. And there may not be much. At some point,
9 this Chapter 7 should go back to the enterprise of the trustee
10 marshaling the assets of the case and the Court being involved
11 as, if and when required to be involved. So --

12 MR. ZILBERBERG: If that's the case, then I --

13 THE COURT: But if you've got a conflict -- if --

14 MR. ZILBERBERG: -- I have a conflict; I have a state
15 court matter.

16 THE COURT: -- if you have a conflict on the 24th,
17 then let's -- I mean it's not simply for me to announce a
18 decision. I don't do that to the parties.

19 MR. ZILBERBERG: I can do the 25th if other counsel
20 can do it.

21 THE COURT: 25th at 9. In fact, it will be the 25th
22 at 9 sharp because I have a trial at 9:30.

23 MR. KRINSKY: Your Honor, with respect to the issue of
24 the closing of the record, it was -- we thought it was going to
25 be closed based upon Your Honor's issuance of the November 29th

1 order directing the Troutman Sanders firm to produce certain
2 documents. However, an issue has arisen. We've tried to
3 resolve that. I filed -- or through Mendelitz's (ph.) firm, we
4 filed a document with the Court last night. However,
5 unfortunately, the issue still remains open.

6 THE COURT: I direct you to confer further on it and
7 see if you can get it resolved.

8 January 25th at 9 o'clock. There's no motion before
9 me to decide. I think sophisticated counsel can work these
10 kinds of things out. E-mail correspondence, if there is any
11 that remains unproduced concerning the retention of the
12 conflicts check, strikes me as something highly likely to be
13 appropriate to produce. But we'll see. Nothing's before me to
14 decide today.

15 Thank you very much.

16 (Whereupon these proceedings were concluded at 9:58 AM)

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I N D E X

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C E R T I F I C A T I O N

I, Shalom Boroda, certify that the foregoing transcript is a
true and accurate record of the proceedings.

SHALOM BORODA

AAERT Certified Electronic Transcriber (CET**D-632)

Veritext

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Date: January 3, 2012

United States Bankruptcy Court

Eastern District of New York
271 Cadman Plaza East, Suite 1595
Brooklyn, NY 11201-1800

IN RE:

CASE NO: 1-10-44815-ess

Christine Persaud

SSN/TAX ID:

CHAPTER: 7

xxx-xx-0247

DEBTOR(s)

NOTICE OF FILING OF TRANSCRIPT AND OF DEADLINES RELATED TO RESTRICTION AND REDACTION

Notice is hereby given that:

A transcript of the proceeding held on December 16, 2011 was filed on January 4, 2012 .

The following deadlines apply:

The parties have until January 11, 2012 to file with the court a Notice of Intent to Request Redaction of this transcript. The deadline for filing a Transcript Redaction Request is January 25, 2012.

If a Transcript Redaction Request is filed, the redacted transcript is due February 6, 2012.

If no such Notice is filed, the transcript may be made available for remote electronic access upon expiration of the restriction period, which is April 3, 2012 unless extended by court order.

To review the transcript for redaction purposes, you may purchase a copy from the transcriber Veritext Reporting Company (212-267-6868) or you may view the document at the public terminal at the Office of the Clerk.

Dated: January 4, 2012

For the Court, Robert A. Gavin, Jr., Clerk of Court

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